

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

2015 AUG 17 A 9:36

Robert G. Marcellus,

UNITED STATES DISTRICT COURT
RICHMOND, VIRGINIA

David Williams,

Barry Hodge,

Timothy Gresham and

Powhatan County Republican Committee,

Plaintiffs,

v.

Case No.

3:15cv481

Virginia State Board of Elections,

James B. Alcorn, in his official capacity as a Member and Chairman of the Virginia State Board of Elections,

Clara Belle Wheeler, in her official capacity as a member and Vice Chair of the Virginia State Board of Elections and

Singleton B. McAllister, in her official capacity as a member and Secretary of the Virginia State Board of Elections,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Robert Marcellus, David Williams, Barry C. Hodge, Timothy Gresham and the Powhatan County Republican Committee, by their counsel, state the following for their Complaint:

Introduction

1. This action challenges the constitutionality of a provision of Va. Code § 24.2-613, both on its face and as applied. That statute allows the name of the political party that has nominated an individual as its candidate for federal, statewide or General Assembly office to appear on the official ballot, but prohibits the name of the political party that has nominated an individual for any other elective office from appearing on the official ballot. The Complaint seeks a declaration that Va. Code § 24.2-613 violates the Plaintiffs' right to freedom of association and to equal protection of the laws guaranteed by the First and Fourteenth Amendments to the United States Constitution, as well as injunctive relief to mandate that Defendants include the designation the Republican Party next to the individual Plaintiffs' name on the official ballot for the November 3, 2015, general election.

Jurisdiction and Venue

2. Jurisdiction over the subject matter of the Complaint is vested in the Court by 28 U.S.C. §§ 1331, 1343(a)(3) and 2201(a).

3. Venue is proper under 28 U.S.C. § 1391.

Parties

4. Plaintiffs Robert Marcellus, David Williams, Barry C. Hodge and Timothy Gresham are residents of Powhatan County, Virginia. Each was nominated on May 21, 2015, by the method selected by Plaintiff Powhatan County Republican Committee pursuant to Va. Code § 24.2 -509(A) and as authorized by the Plan of Organization of the Republican Party of Virginia, as the Republican candidate for public office as a member of the Board of Supervisors of Powhatan County to represent a single-member election district within the County.

5. Defendant Virginia State Board of Elections is the agency of the Commonwealth of Virginia established by Va. Code § 24.2-102 to administer and enforce the election laws of the Commonwealth.

6. Defendants James Alcorn, Clara Belle Wheeler and Singleton B. McAllister are the current members of Defendant Virginia State Board of Elections. Each is sued in his or her official capacity.

Facts

7. Each of the individual Plaintiffs is qualified to run for the public office he seeks in accordance with the requirements of the Commonwealth's election laws. Each has resided in Virginia for more than one year, is qualified to vote for the office he seeks, and has timely filed his sworn statement of qualification and his statement of economic interests with the General Registrar for Powhatan County. Va. Code §§ 24.2-500, 24.2-501, 24.2-502, 24.2-503 and 24.2-507.

8. Each of the individual Plaintiffs is entitled to have his name printed on the official ballot for the November 3, 2015, general election in accordance with the provisions of Va. Code § 24.2-525 because each has been duly nominated by the Republican Party. Va. Code §§ 24.2-504, 24.2-506, 24.2-508 and 24.2-510.

9. The Chairman of the Powhatan County Republican Committee timely certified the name of each of the individual Plaintiffs as the Republican Party candidate for election to the Powhatan County Board of Supervisors for the respective election district of each candidate. Va. Code § 24.2-511.

10. The General Registrar notified Plaintiff David Williams and the Chairman of Plaintiff Powhatan County Republican Committee on August 3, 2015, that the official ballot for

the November 3, 2015, general election will not include the label of the Republican Party next to the name of the individual Plaintiffs who had been nominated by the Party. The General Registrar also provided a reference to Va. Code § 24.2-613 in support of that position, as well as an August 3, 2015, email message to her from Brooks C. Braun, Esq., Policy Analyst, Virginia Department of Elections. A copy of the Braun email is attached hereto as Exhibit 1.

Count 1
Violation of Freedom of Association

11. The preceding allegations are incorporated here by reference.
12. The First and Fourteenth Amendments guarantee the right to associate for the advancement of shared political beliefs.
13. The function of choosing and supporting standardbearers for election to public office is activity protected by the First and Fourteenth Amendments.
14. The individual Plaintiffs have the right to be associated on the general election ballot with the political party that nominated them to the same extent as federal, statewide and General Assembly candidates who have been nominated are permitted to have the political party that nominated them identified next to their names on the ballot.
15. The provision in Va. Code § 24.2-613 which states that for elections for federal, statewide, and General Assembly offices only, the candidate who has been nominated by a political party shall be identified by the name of his political party on the official ballot substantially burdens the Plaintiffs' right of association in violation of the First and Fourth Amendments to the United States Constitution because that statutory provision denies Plaintiffs the benefit of party identification on the ballot in an arbitrary, unreasonable and discriminatory manner.

16. The Defendants are liable to the Plaintiffs pursuant to 42 U.S.C. § 1983 for redress of the Defendants' violation of their right of association secured by the First and Fourteenth Amendments.

Count 2
Violation of Equal Protection Clause

17. The preceding allegations are incorporated here by reference.

18. The individual Plaintiffs and candidates for federal, statewide and General Assembly elections are similarly situated for purposes of their interest in being identified on the official ballot by the name of the political party that has nominated them.

19. Plaintiffs have been injured by the disparate treatment given by Va. Code § 24.2-613 to local candidates who have been nominated by their political party.

20. There is no reasonable and sufficient justification for the disparate treatment of candidates nominated by their political party.

21. Va. Code § 24.2-613 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

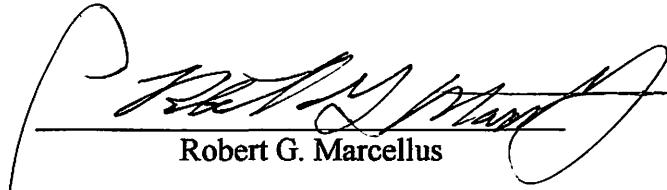
22. The Defendants are liable to the Plaintiffs pursuant to 42 U.S.C. § 1983 for redress of the Defendants' violation of the Plaintiffs' right to equal protection of the laws secured by the Fourteenth Amendment.

Wherefore, Plaintiffs request that judgment be entered in their favor and against Defendants, as follows.

a) Issue a declaratory judgment pursuant to 28 U.S.C. §2201 and 42 U.S.C. § 1983 that Virginia Code § 24.2-613 violates the First and Fourteenth Amendments to the United States Constitution;

- b) Issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and 42 U.S.C. §1983 that Va. Code § 24.2-613 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- c) Grant preliminary and permanent injunctive relief mandating that the names of the individual Plaintiffs be accompanied on the official ballot for the November 3, 2015, general election by the name of the political party that nominated them;
- d) Award Plaintiffs their costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- e) Grant such further relief as the Court deems appropriate.

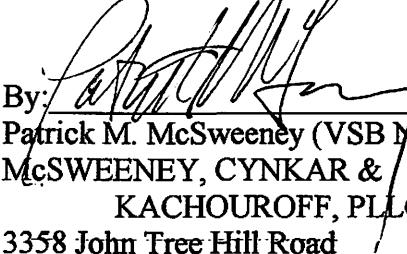
I swear and verify under penalty of perjury that the foregoing statements are true and correct.



Robert G. Marcellus

ROBERT G. MARCELLUS
DAVID WILLIAMS
BARRY HODGE
TIMOTHY GRESHAM
POWHATAN COUNTY REPUBLICAN
COMMITTEE

By:



Patrick M. McSweeney (VSB No. 5669)

McSWEENEY, CYNKAR &
KACHOUROFF, PLLC

3358 John Tree Hill Road
Powhatan, VA 23139
Tel.: (804) 937-0895
Fax: (703) 365-9593
Patrick@mck-lawyers.com

Attorneys for Plaintiffs